

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NICHOLAS A. DECOSTA,

Defendant.

CASE NO. 8:21CR193

**DEFENDANT'S
AMENDED
MOTION FOR VARIANCE**

NICHOLAS DECOSTA, by and through the undersigned, respectfully moves the Court for a variance on Count I per 18 U.S.C. § 3553(a). Per the Revised Presentence Investigation Report (hereinafter "RPSR"), Defendant objects to RPSR paragraphs 41, 75, 76, 77, 80, and 90. Nevertheless, the RPSR establishes Defendant as a leader of the conspiracy with co-defendant Holdman per USSG § 3B1.1(c). The authoring probation officer concludes the position for the two-point role enhancement with, "The conspiracy could not have operated without DeCosta." (RPSR 34). In response, there would be no conspiracy without Holdman. Without Holdman, the drugs would not have been shipped. Holdman lied that DeCosta had the sole relationship with the supplier of the drugs. Not true. On occasion, DeCosta and Holdman together would acquire the drugs from the supplier. Then the conspiracy duties were divided between the co-conspirators. DeCosta worked online and Holdman worked in the field. DeCosta provided a statement to law enforcement and explained how this was a joint endeavor with both parties equally pulling their weight.

The maximum term of imprisonment is 20 years, per 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 841(b)(1)(C). The RPSR calculates the Total Offense Level as 27 and the Criminal History Category I, resulting in a guideline sentencing range of 70 to 84 months. Defendant moves the

Court to deny the two-point role enhancement of USSG § 3B1.1(c). Such would result in a Total Offense level of 25, with a range of 57-71 months imprisonment. For reasons articulated in the Defendant's brief in support, Defendant argues that he is entitled to a further reduction resulting in a Total Offense Level of 23 with a range of 46-57 months.

From that calculation of 46-57 months, Defendant moves the Court for a variance below that Advisory Sentencing Guideline range due to history and characteristics of the defendant per 18 U.S.C. § 3553(a)(1) and . In furtherance of this motion, Defendant submits a brief in support.

NICHOLAS A. DECOSTA, Defendant

By: /s/Joseph L. Howard
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CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

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